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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

In re:) Case No. 00-30874-B-13J

JEFFREY C. SARAGOZA AND DIANA)
SARAGOZA,) Chapter 13

Debtors.)
Adversary No.

JEFFREY C. SARAGOZA AND DIANA) **COMPLAINT TO AVOID**
SARAGOZA,) **A LIEN AGAINST**
Plaintiffs,) **DEBTORS' PERSONAL**
vs.) **RESIDENCE (Bankruptcy**
) **Rule 7001(2))**

ALASKA EASTERN PARTNERS, A LIMITED)
PARTNERSHIP; SECURITY NATIONAL)
PROPERTIES SERVICING COMPANY, LLC;)
MORTGAGE ELECTRONIC REGISTRATION)
SYSTEMS INC.; T. D. SERVICE COMPANY)

Defendants.

JEFFREY C. SARAGOZA and DIANA SARAGOZA hereby allege:

1 1. Plaintiffs JEFFREY C. and DIANA SARAGOZA (hereinafter "SARAGOZA") or
2 "Plaintiffs") are, and at all times mentioned herein were, residents of the County of San Joaquin,
3 State of California, and are the debtors in this proceeding.

4 2. Defendant ALASKA EASTERN PARTNERS, A LIMITED PARTNERSHIP
5 (hereinafter "ALASKA") is, and at all material times herein was, a limited partnership organized
6 as a Sales Finance Company in the State of Alaska and qualified to do business in California, with
7 a principal place of business at 323 Fifth Street, Eureka, CA 95501.

8 3. Defendant SECURITY NATIONAL PROPERTIES SERVICING COMPANY, LLC
9 (hereinafter "SECURITY") is, and at all material times herein was, a limited liability company
10 organized in the State of Alaska and qualified to do business in California, with a principal place of
11 business at 323 Fifth Street, Eureka, CA 95501. SECURITY is the servicing agent for ALASKA.

12 4. Defendant MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.
13 (hereinafter "MERS") is, and at all material times herein was, a corporation organized and existing
14 in the State of Michigan, and is the assignee of the subject mortgage loan.

15 5. Defendant T. D. SERVICE COMPANY (hereinafter "TD SERVICE") is, and at all
16 material times herein was, a corporation organized and existing in the State of California, with a
17 principal place of business at 1820 East First Street, Ste. 300, Santa Ana, CA 92705. TD SERVICE
18 the servicing agent for MERS.

19 6. This adversary proceeding arises out of and relates to the chapter 13 case of
20 SARAGOZA, Case No. 00-30874 on the docket of this court. This Court has subject matter
21 jurisdiction pursuant to 28 U.S.C. § 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2)(K).

22 7. Debtors filed a voluntary petition for relief under Chapter 13 of the Bankruptcy Code
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1 on September 29, 2000, thereby commencing this case.

2 **FIRST CLAIM FOR RELIEF**

3 Plaintiffs allege as and for a First Cause of Action against defendants and each of them as
4 follows:
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6 8. Plaintiffs hereby incorporate by reference paragraphs 1 through 7 as though set forth
7 in their entirety herein.

8 9. On or about November 7, 1996, SARAGOZA executed a promissory note for
9 \$30,000, secured by a deed of trust on SARAGOZA'S residence in Lodi, California. The deed of
10 trust was assigned to MERS and an Assignment of Deed of Trust was recorded on April 30, 2004.
11 A true and correct copy of the Assignment of Deed of Trust is attached hereto as Exhibit "A" and
12 incorporated herein by this reference.
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14 10. An Order Confirming Amended Plan and Valuing Collateral was filed herein on
15 January 30, 2001. The Confirmed Plan granted Debtors' motion to value the collateral of ALASKA
16 at \$0.00 and the deficiency treated as a general unsecured claim. The Confirmed Plan provided for
17 0% to general unsecured creditors. ALASKA and/or any of its agents or assigns did not file a proof
18 of claim in this proceeding.
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20 11. Thus, MERS' claim, as assignee of ALASKA, is wholly unsecured and subject to
21 avoidance pursuant to 11 U.S.C. § 506 and *In re: Sieglinde M. Zimmer, Debtor, Zimmer v. PSB*
22 *Lending Corporation* (2002) 313 F.3d 1220.
23

24 WHEREFORE, SARAGOZA prays that judgment be entered against defendants, and each
25 of them, as follows:

26 1. An order avoiding that certain Deed of Trust recorded in the State of California,
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County of San Joaquin Official Records, dated November 7, 1996 and recorded on December 6, 1996, as Instrument No. 96120735;

2. An order avoiding that certain Assignment of Deed of Trust dated April 26, 2004 and recorded April 30, 2004 as Instrument No. 2004-092956, Official Records of San Joaquin County.

3. For such other and further relief as the court may deem just and proper.

DATED: August 10, 2005

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By: /s/ John D. Maxey
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